

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

SUPREME COURT OF CALIFORNIA,  
Plaintiff,  
v.  
CHARLES KINNEY,  
Defendant.

Case No. 3:15-cv-01552-LB

**ORDER DENYING MR. KINNEY'S  
SECOND MOTION FOR  
RECONSIDERATION**

[Re: ECF No. 24]

**INTRODUCTION**

Mr. Kinney moves, pursuant to Federal Rules of Civil Procedure 59 “and/or” 60, “to vacate, for relief, for alteration and/or for reconsideration of” the court’s May 15, 2015 order granting the State Bar’s motion to remand and June 2, 2015 order denying Mr. Kinney’s motion to stay the May 15, 2015 order. (Second Motion for Reconsideration, ECF No. 24 at 2; *see* Remand Order, ECF No. 13; Order Denying Stay, ECF No. 23.<sup>1</sup>) For the reasons stated below, the court denies Mr. Kinney’s motion.

**STATEMENT**

Charles Kinney removed an attorney disciplinary action brought against him by the California Supreme Court. (Notice of Removal, ECF No. 1.) On May 15, 2015, the court remanded the

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<sup>1</sup> Record citations are to documents in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the tops of the documents.

1 action pursuant to 28 U.S.C. § 1447(c) for lack of subject-matter jurisdiction. (Remand Order,  
2 ECF No. 13.) Three days later, on May 18, 2015, Mr. Kinney filed a motion pursuant to Federal  
3 Rules of Civil Procedure 59 and 60 that asked the court to reconsider its remand order. (First  
4 Motion for Reconsideration, ECF No. 14.) The next day, on May 19, 2015, the clerk of the court  
5 mailed a certified copy of the remand order to the state court. (5/19/2015 Clerk's Notice, ECF No.  
6 15.) A few days after that, on May 26, 2015, Mr. Kinney filed a motion asking the court to stay its  
7 remand order. (Motion to Stay, ECF No. 16.)

8 On May 27, 2015, the court issued an amended remand order that fixed a citation error.  
9 (Amended Remand Order, ECF No. 18.). Also on May 27, 201, the court issued an order denying  
10 Mr. Kinney's first motion for reconsideration, and the court amended that order on June 2, 2015.  
11 (Order Denying Reconsideration, ECF No. 19; Amended Order Denying Reconsideration, ECF  
12 No. 22.) In doing so, the court made clear that it remanded the attorney disciplinary action  
13 pursuant to 28 U.S.C. § 1447(c) for lack of subject-matter jurisdiction, not for a defect in removal  
14 procedure as Mr. Kinney suggested in his motion for reconsideration. Also on June 2, 2015, the  
15 court denied Mr. Kinney's motion to stay, and the clerk of the court mailed a certified copy of the  
16 court's amended remand order to the state court. (Order Denying Stay, ECF No. 23; 6/2/2015  
17 Clerk's Notice, ECF No. 21.)

18 Thereafter, on June 8, 2015, Mr. Kinney filed a second motion for reconsideration. (Second  
19 Motion for Reconsideration, ECF No. 24.) Four days later, on June 12, 2015, Mr. Kinney filed a  
20 notice of appeal in which he appeals to the Ninth Circuit the following six orders: (1) the May 15,  
21 2015 remand order; (2) the May 27, 2015 amended remand order; (3) the May 27, 2015 order  
22 denying reconsideration; (4) the June 2, 2015 amended order denying reconsideration; (5) the June  
23 2, 2015 order denying a stay; and (6) "the (expected but not yet issued) order denying" Mr.  
24 Kinney's second motion for reconsideration. (Notice of Appeal, ECF No. 26 at 2.)

## 25 ANALYSIS

### 26 I. THE COURT HAS JURISDICTION TO CONSIDER MR. KINNEY'S MOTION

27 Before the court considers the merits of Mr. Kinney's second motion for reconsideration, it  
28 must first determine whether jurisdiction exists to do so. First, while there is little authority on this

1 issue, the court does not believe that the fact that the action was already remanded means the court  
2 is precluded from considering Mr. Kinney's motion. It is true that the Ninth Circuit determined in  
3 *Seedman v. United States District Court for the Central District of California* that the event that  
4 divests the district court of jurisdiction is the mailing of the certified copy of the order of remand  
5 to the clerk of the state court. 837 F.2d 413, 414 (9th Cir. 1988) ("Once a [district] court certifies a  
6 remand order to state court [the district court] is divested of jurisdiction and can take no further  
7 action on the case."); *see also* 28 U.S.C. § 1447(c) ("A certified copy of the order of remand shall  
8 be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with  
9 such case."). In this case, the clerk already mailed certified copies of the remand order and  
10 amended remand order to the state court, so normally this would mean that the court no longer has  
11 jurisdiction to consider a motion for reconsideration. *See, e.g., Deutsche Bank Nat'l Trust Co. v.*  
12 *Krevitsky*, No. 1:12-cv-1466 AWI DLB, 2012 WL 4863872, at \*1 (E.D. Cal. Oct. 12, 2012)  
13 (denying a motion for reconsideration of a remand order where a certified copy of the remand  
14 order had already been mailed to the state court).

15 But it is also true that *Seedman* involved an instance where the district court was precluded  
16 from reviewing its remand order because that order was one that was "not reviewable on appeal or  
17 otherwise." 837 F.2d at 414; *see In re Shell Oil Co.*, 932 F.2d 1523, 1528 (5th Cir. 1991) (making  
18 a similar distinction regarding Fifth Circuit authority). As the court noted previously, the court's  
19 decision that this action was not removable under 28 U.S.C. § 1443, however, is reviewable "by  
20 appeal or otherwise." 28 U.S.C. § 1447(d) ("[A]n order remanding a case to the State court from  
21 which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal  
22 or otherwise."). In such a situation—where the district court clerk already mailed a certified copy  
23 of the remand order to the state court but where the action was removed in part pursuant to 28  
24 U.S.C. § 1443—at least one district court has concluded that it still may reconsider its remand  
25 order. *See Bank of Am., N.A. v. Johnson*, No. C-06-396, 2006 WL 2981190, at \*1 (S.D. Tex. Oct.  
26 16, 2006) (refusing to reconsider remand order insofar as it was based on a lack of federal-  
27 question or diversity jurisdiction but considering (and rejecting) the defendant's arguments  
28 regarding the propriety of removal under 28 U.S.C. § 1443, even though a certified copy of the

1 remand order had already been mailed to the state court). Given this authority, the court concludes  
2 that it may still review its remand order even though Mr. Kinney filed his second motion for  
3 reconsideration after the clerk of the court mailed certified copies of the remand orders to the state  
4 court.

5 Second, although “[a]s a general rule, the filing of a notice of appeal divests a district court of  
6 jurisdiction over those aspects of the case involved in the appeal,” *Stein v. Wood*, 127 F.3d 1187,  
7 1189 (9th Cir. 1997), and although Mr. Kinney has filed a notice of appeal, the court still has  
8 jurisdiction to entertain and rule on Mr. Kinney’s motion. *See Daniels v. Community Lending,*  
9 *Inc.*, No. 13cv488-WQH-JMA, 2015 WL 2338713, at \*3 n.2 (S.D. Cal. May 12, 2015)  
10 (considering a party’s motion for reconsideration even though the party subsequently filed a notice  
11 of appeal) (citing *Stone v. I.N.S.*, 514 U.S. 386, 401 (1995) (“[T]he pendency of an appeal does not  
12 affect the district court’s power to grant Rule 60 relief.”)); *Fews v. Perez*, No. C 03-3770 PJH  
13 (PR), 2006 WL 2791151, at \*1 (N.D. Cal. Sept. 27, 2006) (“[I]f a notice of appeal is treated as  
14 having been filed after the motion to reconsider, this court has jurisdiction to rule on the motion  
15 and the notice of appeal does not become effective until the motion is ruled upon . . . .”) (citing  
16 Fed. R. App. P. 4(a)(4)(B) (a notice of appeal that is filed while certain motions, including a  
17 motion for reconsideration under Rules 59 and 60, are pending is not effective until such motions  
18 are ruled upon)).

19 In sum, the court concludes that there is no jurisdictional bar to its consideration of Mr.  
20 Kinney’s second motion for reconsideration. The court considers the merits of his motion below.

## 21 **II. MR. KINNEY’S MOTION FAILS ON THE MERITS**

### 22 **A. LEGAL STANDARD**

23 A motion to reconsider a final appealable order is appropriately brought under either Federal  
24 Rule of Civil Procedure 59(e) or 60(b). *See Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1442 (9th Cir.  
25 1991). Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of  
26 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d  
27 877, 890 (9th Cir. 2000); *see also Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011).  
28 Motions for reconsideration should not be frequently made or freely granted. *Twentieth Century–*

*Fox Film Corp. v. Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1980).

Rule 59(e) allows a party to seek an order altering or amending a judgment. Rule 59(e) does not state when a court should reconsider a prior decision, but the Ninth Circuit has stated that “Rule 59(e) amendments are appropriate if the district court ‘(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.’” *Dixon v. Wallowa Cnty.*, 336 F.3d 1013, 1022 (9th Cir. 2003) (quoting *School Dist. No. 1J, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)).

And under Rule 60(b),

the court may relieve a party. . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

Generally speaking, though, a motion for reconsideration “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (referring to Rule 59(e)); *see also Casey v. Albertson’s Inc.*, 362 F.3d 1254, 1259–61 (9th Cir. 2004) (referring to Rule 60(b)); *Kona Enters.*, 229 F.3d at 890 (interpreting Rule 59(e)). The sole exception is when the court has committed “clear” or “manifest” error. Mere disagreement with a court’s order, however, does not provide a basis for reconsideration. *See McDowell v. Calderon*, 197 F.3d 1253, 1256 (9th Cir. 1999).

## **B. APPLICATION**

In his motion, Mr. Kinney makes the overarching argument that “[t]his is not an ‘attorney discipline action’” but instead “is a ‘judicial corruption action.’” (Second Motion for Reconsideration, ECF No. 24 at 2.) He then makes several specific arguments. First, he argues that

1 the “judicial corruption” violates federal law, namely 11 U.S.C. § 101, et seq., the Voting Rights  
2 Act of 1965, the Clean Water Act, and the Americans with Disabilities Act. (*Id.* at 2.) Second, he  
3 argues that the “judicial corruption” violates state law, namely various sections of the California  
4 Constitution, as well as Cal. Bus. & Prof. Code §§ 6001.1 and 6031(b). (*Id.* at 2-4.) Third, he  
5 argues that the court ignored his argument that *In re Kinney*, 201 Cal. App. 4th 951 (Cal. Ct. App.  
6 2011), is void and therefore the attorney disciplinary action against him is improper and meritless.  
7 (*Id.* at 4-5.) Fourth, he argues that the court does in fact have subject-matter jurisdiction over this  
8 action because he meets the requirements for removal under the Civil Rights Act of 1866. (*Id.* at  
9 5-6.) And fifth, he argues that he has meets the requirements for a stay. (*Id.*)

10 Mr. Kinney’s motion fails under both Rule 59(e) and Rule 60(b). As for Rule 59(e), he has not  
11 presented the court with newly discovered evidence, demonstrated that the court committed clear  
12 error or that its decisions to remand the action or deny his motion for a stay were manifestly  
13 unjust, or shown that there is an intervening change in controlling law. This is an attorney  
14 disciplinary action that was improperly removed to federal court, plain and simple. It is not a  
15 “judicial corruption action,” whatever that means in this context. Mr. Kinney’s arguments about  
16 “judicial corruption” in violation of various federal and state laws are inapposite to the court’s  
17 decisions to remand the action for lack of subject-matter jurisdiction or to deny his motion for a  
18 stay while he appeals to the Ninth Circuit. His argument that the attorney disciplinary action is  
19 improper and meritless because it stems from *In re Kinney*, which he says is void, also is  
20 inapposite because that argument goes to the merits of the dispute, not to whether the action was  
21 properly removed or not. And his arguments that he meets the requirements for removal under the  
22 Civil Rights Act of 1866 and for a stay are supported by nothing new and were already considered  
23 and rejected by the court in its prior orders.

24 As for Rule 60(b), none of Mr. Kinney’s arguments provided any reason to relieve him from  
25 the court’s remand order or order denying a stay because of mistake, inadvertence, surprise, or  
26 excusable neglect. He also has not presented the court with newly discovered evidence that, with  
27 reasonable diligence, he could not have been discovered in time to move for a new trial under Rule  
28 59(b). To the extent that he argues that his “judicial corruption” assertions support a conclusion

1 that an opposing party has committed fraud, misrepresentation, or misconduct, the court finds this  
2 argument to be inapposite to the court's decisions to remand the action for lack of subject-matter  
3 jurisdiction or to deny his motion for a stay. He also does not argue that the court's decisions to  
4 remand the action for lack of subject-matter jurisdiction or to deny his motion for a stay are void,  
5 have been satisfied, released, or discharged, are based on an earlier judgment that has been  
6 reversed or vacated, or that applying them prospectively is no longer equitable. In sum, the court  
7 concludes that none of the bases for relief set forth in Rule 60(b) justifies relief.

8 **CONCLUSION**

9 For the reasons stated above, the court denies Mr. Kinney's second motion for  
10 reconsideration.<sup>2</sup>

11 **IT IS SO ORDERED.**

12 Dated: June 19, 2015



13  
14 LAUREL BEELER  
United States Magistrate Judge

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27 <sup>2</sup> Mr. Kinney also requests that the court take judicial notice of a reply brief that he filed in state  
28 court on June 9, 2015. (Request for Judicial Notice, ECF No. 25.) Because the court finds the  
reply brief inapposite to this decision to deny his second motion for reconsideration, the court also  
denies his request for judicial notice.